

**In the matter of Arbitration
between
Columbia Heights Federation of
Teachers,
Local 710 and Independent School
District No. 13**

OPINION AND AWARD

BMS Case No. 07-PA-0349

GRIEVANCE ARBITRATION

ARBITRATOR

Joseph L. Daly

APPEARANCES

On behalf of Columbia Heights Federation of Teachers, Local 710
Anne F. Krisnik, Esq.
Education Minnesota
St. Paul, Minnesota

On behalf of Independent School District No. 13
Karen P. Kepple, Esq.
White Bear Lake, Minnesota

JURISDICTION

In accordance with the Master Agreement between Independent School District No. 13, Columbia Heights, Minnesota and Columbia Heights Federation of Teachers, Local 10, for school years 2005-2006 and 2006-2007; and, under the jurisdiction of the State of Minnesota, Bureau of Mediation Services, the above grievance arbitration was submitted to Joseph L. Daly, Arbitrator, on January 31, 2007 at the school district offices in Columbia Heights, Minnesota. Post-Hearing Briefs were filed by the parties on April 3, 2007. The decision was rendered by the arbitrator on April 18, 2007.

ISSUE AT IMPASSE

Based on numerous potential variations that this grievance presents, the parties agreed to submit a single factual scenario to this arbitrator and use the decision on that scenario to determine the pay for all other new teachers. [Post-Hearing Brief of Union at 2]. The agreed upon issue is based on the agreed upon scenario.

The issue is:

Should the teacher in the scenario placed on Step 2 or Step 3 of the 2005-06 contract? [Id. at 3].

The agreed upon scenario is:

Facts: A teacher was hired in June of 200t to begin working in the Columbia Heights School District at the start of the 2005-06 school year. The School Board approved his contract at its June meeting. He has two years of experience in another school district. Under the terms of the Contract (Article XI, Section 5), he is given credit for both years of experience and told he will be placed on Step 3.

At the time he is hired, the Contract for 2005-07 is not yet settled. The contract is approved and ratified in 2006. As a result, this teacher is paid in Step 3 of the 2004-05 Contract until the new Contract is ratified.

In negotiations, the parties agree to drop the bottom (beginning) step and renumber the remaining steps. No contract language is changed. [Id.].

The relevant contract provisions are:

**Article IV
SCHOOL BOARD RIGHTS**

Section 1. Inherent Managerial Rights: Local 710 recognizes that the Board is not required to meet and negotiate on matters of inherent managerial policy, which include, but are not limited to such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure, and selection, direction and number of personnel, unless otherwise covered by the terms of this Agreement.

Section 4. Reservation of Managerial Rights: The foregoing enumeration of Board rights and duties shall not be deemed to exclude other inherent management rights and management functions not expressly reserved herein.

**Article XI
RATES OF PAY**

Section 1. 2005-2006 Rates of Pay: Wages and salaries reflected in Schedules A and B, attached hereto, shall be effective only for the 2005-2006 school year, and teachers shall advance only one increment on the salary schedule.

Section 2. 2006-2007 Rates of Pay: Wages and salaries reflected in Schedules C and D, attached hereto, shall be effective only for the 2006-2007 school year, and teachers shall advance only one increment on the salary schedule.

**ARTICLE XV
DURATION**

Section 1. Terms and Reopening Negotiations: This Agreement shall remain in full force and effect for a period commencing on July 1, 2005 through June 30, 2007 and thereafter until modifications are made pursuant to the PELRA of 1971, as amended. If either party desires to modify or amend this Agreement commencing on July 1, 2007, it shall give written notice of such intent no later than June 30, 2007. Unless otherwise mutually agreed, the parties shall not commence negotiations more than 90 days prior to the expiration of this Agreement.

Section 5. Prior Experience: Upon employment, a teacher with experience in other school systems, shall receive full credit for such experience up to a maximum of ten (10) years. The Board, at its discretion, may grant credit beyond the maximum, etc.

FINDINGS OF FACT

1. The parties began negotiations for the 2005-07 contract prior to its expiration on June 30, 2005. However, the contract was not settled at the start of the 2005-06 school year, so the 2004-05 contract remained in effect. The 2004-05 contract remained in effect because Minnesota Statute Section 179A.20, subd. 6 states that the previous contract [2004-05] shall remain in effect until the new contract [2005-07] is settled. After ratification of the 2005-07 Collective Bargaining Agreement, salary and benefits were retroactive to July 1, 2005, the beginning date of the 2005-2007 CBA.

2. Teachers hired in the spring and summer of 2005 to begin work at the start of the 2005-06 school year were placed on the 2004-05 salary schedule. All teachers involved in the present grievance were given credit for their prior teaching experience.

3. The 2005-07 contract was ultimately settled in January 2006. As part of the negotiations, the parties agreed to drop the entry level step, thereby increasing the starting salary for new teachers. During negotiations, all parties agreed they needed to increase the starting pay for teachers in order to attract and retain high quality teachers.

4. During the bargaining, the Union proposed that the step compression provide that teachers with 1-5 years of experience be placed on a step called "Step 1-5". [Post-Hearing Brief of Union at 8; see, Union Exhibit No. 3]. This proposal was rejected by the school district. Instead the parties agreed to the district's proposal—a schedule which simply dropped the entry level step, converting the former Step 1 into Step 2. [Id.]

5. When the district determined retroactive pay for the new teachers, it treated them as if they had been employed under the 2004-05 contract and used the step conversion procedure that was used for existing employees. The Union objected, stating that the employees were new hires and should be placed on the 2005-06 schedule with credit for their experience; thereby potentially placing the new teachers in the district with experience on higher steps than the new step number 1. The district and the Union both concede that all these new teachers were told they would receive full credit for their experience, as allowed under the contract in Article XI, Section 5, subd. 1 “upon employment, a teacher with experience in other school systems, shall receive full credit for such experience up to a maximum of ten (10) years. The Board, at its discretion, may grant credit beyond the maximum, etc.”

6. As part of the 2005-07 contract settlement, not one but two steps were eliminated from the bottom of the salary schedule in each of the two contract years. This required a re-numbering of the steps. During the negotiations, the school district proposed assigning letters to the steps for the transition year, and then returning to re-numbered steps to eliminate the confusion that both parties agree could result from the step elimination. The Union declined that proposal. [Post-Hearing Brief of District at 1-2].

7. Both the Union and the district agreed in testimony at the arbitration hearing that any teachers hired prior to the settlement of the 2005-07 contract were properly quoted a salary based on the 2004-05 contract. [Post-Hearing Brief of Union at 4]. This was necessary, argues the Union, because it was by Minnesota Statute the contract in effect at the time; and, it was as yet unknown what the 2005-06 salary would be.

8. The language in the 2005-07 contract “allows the teacher with prior experience to get the benefit of that experience on the salary schedule” [Post-Hearing Brief of District at 3]. Superintendent Nancy Kaldor testified at the arbitration hearing that the number of years of teaching experience before being hired at Independent School District No. 13 does “not necessarily correlate to the step number in which the teacher is placed initially at the school district”. [Id.]. “For example, the

school district does not grant credit on the step schedule for years of teaching in private schools”. In addition, industrial technology or teachers who had mid-life career changes with many years of work experience elsewhere may be given credit for those years of working, although those years do not represent teaching experience.” [Id. at 3-4].

The Union counters by saying “it was crystal clear that the Union believed new staff [with experience] would make more than existing staff with equal experience” under the new contract. [Post-Hearing Brief of Union at 9]. “Further, [Human Resources Director] Ms. de Juan Gomez acknowledged that the district believed this as well”. [Post-Hearing Brief of Union at 9].

9. The basic contentions of the Union are:

a. The contract provisions are clear. All pay provisions are retroactive. The contract requires that teachers hired for 2005-06 school year be paid under the 2005-06 contract.

b. It is irrelevant when the Board approved the teachers’ contracts. They were newly hired in 2005-06.

c. The district admitted that some 2005-06 hires should be placed on the salary schedule under the 2005-06 contract.

d. The bargaining history makes clear that new teachers would not go through the conversion process.

e. The district wants to write language into the contract that is not there.

Essentially, the Union contends that it seeks a “simple remedy” in this case. The Union asks that the teachers be made whole. First, it seeks appropriate step placement and back pay for the affected teachers. Second, since these teachers have been deprived of those funds for over a year, while the district has been earning interest on these funds, the Union seeks interest on the unpaid wages.

10. The basic contentions of the school district are:

a. Catherine Sween, the chief negotiator for the Union for the 2005-07 Collective Bargaining Agreement, acknowledged at the arbitration hearing that the parties never discussed how the

compression would affect the new hires and acknowledged there is no contract language specifically addressing the compression. The step conversion schedule does not state that it is limited to employees who have been working in the school district during the 2004-05 year or before. The Union simply “assumed” that their interpretation of the compression of steps was the correct interpretation.

b. The school district must rely upon the settlement and structural balance report presented to and approved by the school board and provided to the State of Minnesota. The approved settlement and structural balance report did not contemplate the Union’s assumptions regarding step placement. There has been no school board approval of the settlement the Union is seeking. Director of Business Services for Independent School District No. 13 Joseph Primus testified that the school district’s fund balance did not support the settlement the Union now desires. [Post-Hearing Brief of District at 2].

c. While it is true that the language in the contract allows the teacher with prior experience to get the benefit of that experience on the salary schedule, Superintendent Nancy Kaldor testified at the arbitration hearing that the number of years of teaching experience before being hired at Independent School District No. 13 do not necessarily correlate to the step number on which the teacher is placed initially at the school district. In any event, in this case, the school district did assign the teachers hired in spring and summer 2005 to steps reflecting their years of experience in other school districts and designated a salary based on 2003-05 salary schedule, both of which were mutually agreed upon by the school district and each teacher. The new teacher hires were given the negotiated increases to the salary schedule and a retroactive payment based upon these negotiations. The District argues to then add retroactive payment to what amounts to two step increases for the 2005-06 school years is an unexpected windfall to those new hires and in conflict with the Master Agreement. [Id. at 4].

Essentially, Independent School District No. 13 contends the management rights clause in the Master Agreement [Article IV, Section 1] has preserved the school district’s right to determine initial placement of teachers on the salary schedule. The contract provisions regarding credit for years of

experience and retroactivity do not permit the Union's interpretation of the impact of step elimination from the salary schedule. The school board did not approve a settlement granting new teacher hires with prior experience, in effect, two step movements in one school year in violation of Article XI, Sections 1 and 2 of the Master Agreement. [Id. at 5-6].

DECISION AND RATIONALE

The parties agree that any teachers hired prior to the settlement of the 2005-07 contract were properly quoted a salary based on the 2004-05 contract. This was the contract in effect at the time. It would not have been possible to predict the 2005-06 salary. However, under the district's theory of the case, the teachers hired prior to the settlement of 2005-07 contract should be treated as though they were employed during the 2004-05 school district. Yet they simply were not employed during or for the 2004-05 school year; and, should not be treated as if they were.

The contract requires that teachers hired for 2005-06 school years be paid under the 2005-06 contract. While their initial placement was made under the 2004-05 schedule because the 2005-2007 contracts had not yet been finalized, they were, in fact, new teachers hired for the 2005-2006 school year and should have been paid as such as soon as the contract went into effect. Since the contract was retroactive to July 1, 2005, they were therefore teachers hired for the school year 2005-2006 and contractually protected by the 2005-2007 contract.

Despite the district's suggestion that its actions were consistent with the "practice" of the district, the district was not able to identify any "practice" of applying one year's contract to another year's placement on the salary schedule. Further, the evidence shows that the district properly applied contract terms retroactively for some employees. For example, Diane Scully, an art teacher, testified regarding new contract language giving teachers a stipend for more than one course during a single hour. Ms. Scully had a multi-course assignment during the same hour during both first and third trimesters. During the first trimester, she was paid according to the 2004-05 contract; this contract provided no additional pay for multi-course assignments and she received none. However, after the contract was

settled, the district paid Ms. Scully \$1,000.00 as retroactive pay for the additional assignment. The district recognized the obligation to pay Ms. Scully and others for 2005-07 under the 2005-07 contract, despite the fact she was working, by law, under the terms of the 2004-2005 contract.

Negotiation notes show that both parties understood the step conversion would be implemented in the manner that the Union contends. In reviewing the district's proposal, the Union expressed concern over how current teachers would react. The Union indicated that existing teachers would be upset "when newcomers would be making more [why wouldn't these teachers] leave and re-apply?" [Union Exhibit No. 4, pg. 2]. The district acknowledged these concerns, but responded that "seniority and movement toward tenure were benefits of staying through this contract". [Post-Hearing Brief of Union at 8-9, citing Union Exhibit No. 4, pg. 2].

Further, at the end of her testimony, Human Resources Director Anabell de Juan Gomez did not disagree with Katherine Sween's testimony that the Union had expressed concerns that new hires would make more than existing employees. Ms. de Juan Gomez also testified at the arbitration hearing that the Union thought employees would be upset when new people with the same experience made more than they did. [Id. at 9].

Based on the testimony of the various witnesses at the arbitration hearing, it is clear to this arbitrator that the Union believed new staff would, in fact, make more than existing staff with equal experience. This testimony only makes sense if 2005-06 hires are placed on the 2005-06 schedule.

The contract requires that new teachers be given credit for up to 10 years of experience. (Article XI, Section 1, subd. 1). It expressly states that all provisions are retroactive (Article XV, Section 5). It further states that the 2005-06 salary schedule is "effective only for 2005-06 school year". The contract provisions are clear. The new hires are 2005-06 hires and must be placed and paid on the 2005-06 schedule. There is no language in the contract allowing a two-tiered approach to salary for newly hired teachers. The contract provides a single salary schedule for all 2005-06 employees. The contract does not allow these teachers to be "constructively hired" under the 2004-05 contract, then moved to the

2005-06 schedule. There is a single schedule for 2005-06. There cannot be two rules for teachers hired during the 2005-06 school year.

Based on the above rationale, it is held that the Union's interpretation of the 2005-07 contract is correct. Based on the agreed upon scenario [see **Issue at Impasse** above] the teacher hired in June 2005 to begin working at the start of the 2005-06 should be placed on Step 3 of the 2005-06 contract.

The Union and the district have agreed that they will use this decision to determine the pay for all other new teachers. The District will pay statutory interest on the amount of money it had the benefit of using during this time.

Dated: April 18, 2007.

Joseph L. Daly
Arbitrator